## Taff Hotels Sdn Bhd v Permodalan Nasional Bhd

HIGH COURT (KUALA LUMPUR) — SUIT NO D5-22-730 OF 1996
STEVE SHIM J
25 NOVEMBER 1999

***Evidence*** *— Witness — Coaching of — Plaintiff's counsel alleged to have coached witness during adjournment of cross-examination — Whether discussions on matters arising out of cross-examination allowed and amounts to coaching witness in his evidence in court*

Counsel for the defendant applied to cross-examine PW1 as to what transpired between him and counsel for the plaintiff during an adjournment. It had been alleged by counsel for the defendant that PW1 and counsel for the plaintiff were seen discussing matters arising out of the cross-examination of PW1 suggesting that PW1 was being coached in his evidence while still in the process of being cross-examined. The application was opposed by counsel for the plaintiff.

**Held**, allowing the application:

Discussion in the nature of coaching a witness in his evidence as to what he is expected to say in the witness-box would be most reprehensible and calls for condemnation in the strongest terms (see p 624A). Here, a specific allegation had been made that there was coaching by counsel for the plaintiff of PW1 in the discussion between them during an adjournment while PW1 was still under cross-examination. In response, counsel for the plaintiff maintained that she did not (to use her own words) 'have any dealings with PW1 behind anybody's back'. What that means was not entirely clear. She did not specifically refute the allegation raised by counsel for the defendant which naturally opened the door to an inference that there might be some truth in the allegation (see p 624A–B).

**[Bahasa Malaysia summary**

Peguam defendan memohon untuk memeriksa balas PW1 mengenai apa yang berlaku antara beliau dan peguam plaintif semasa penangguhan kes. Adalah didakwa oleh peguam defendan bahawa PW1 dan peguam plaintif dilihat berbincang perkara yang timbul hasil pemeriksaan-balas PW1 yang mencadangkan bahawa PW1 telah dilatih dalam keterangan beliau ketika masih di dalam proses pemeriksaan-balas. Permohonan tersebut telah dibangkang oleh peguam plaintif.

**Diputuskan**, membenarkan permohonan tersebut:

Perbincangan dalam bentuk melatih saksi dalam keterangan beliau mengenai apa yang beliau dikehendaki bercakap dalam kandang saksi adalah amat dikeji dan mewajarkan kutukan yang keras (lihat ms 624A). Di sini, satu dakwaan khusus telah dibuat bahawa wujud

tunjuk-ajar oleh peguam plaintif mengenai PW1 di dalam perbincangan antara mereka semasa penangguhan kes ketika PW1 masih di dalam pemeriksaan-balas. Sebagai respons, peguam plaintif menegaskan bahawa beliau tidak (dengan mengguna perkataan beliau sendiri) 'mempunyai apa-apa urusan dengan PW1 secara tersembunyi'. Apa yang dimaksudkan adalah kurang jelas. Beliau tidak secara khusus menyangkal dakwaan yang ditimbulkan oleh peguam defendan yang dengan sendirinya membuka jalan kepada satu inferen bahawa mungkin terdapat sedikit kebenaran di dalam dakwaan tersebut (lihat ms 624A–B).]

**Notes**

For cases on witness generally, see 7 *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2053–2193.

**Cases referred to**

*Lau Pak Ngam v R* [1966] Crim LR 443 (refd)
*Moomin bin Seman v PP* [1993] 3 MLJ 282 (refd)

*Ong Kim Buai* (*Lee Perara & Tan*) for the plaintiff.
*Subayogan Sinniah* (*Zainal Abidin & Co*) for the defendant.

**Steve Shim J**: There is an application by counsel for the defendant to cross-examine PW1 as to what transpired between him and counsel for the plaintiff during an adjournment. It has been alleged by counsel for the defendant that PW1 and counsel for the plaintiff were seen discussing matters arising out of the cross-examination of PW1 suggesting that PW1 was being coached in his evidence while still in the process of being cross-examined. The application is opposed by counsel for the plaintiff.

Now, there are of course discussions and discussions. I would not think that a discussion between counsel and his witness during an adjournment in matters of a general nature relating to the case as a whole and which is absolutely essential to an effective prosecution or defence of his case should attract any adverse implications even though it may occasionally and by force of necessity transgress into matters arising out of the cross-examination of the witness. Counsel for the defendant has drawn attention to the case *Moomin bin Seman v PP* [1993] 3 MLJ 282 wherein Richard Tallala J cited with approval the observation of Hogan CJ in the Hong Kong case of *Lau Pak Ngam v R* [1966] Crim LR 443 which states:

> If a police officer — or indeed anyone connected with a case — enters unnecessarily into conversation with a witness as to his or her evidence during an adjournment of the witness's testimony, the officer at once exposes himself and the witness to the suggestion that the evidence subsequently given is in some way affected by such conversation and possibly distorted so as to present a picture more favourable to one side.

The use of the word 'unnecessarily' would seem to suggest that there is no total prohibition involved and that there are perhaps occasions where

conversations or discussions, which are found to be necessary, are allowed. However, if the discussion is in the nature of coaching a witness in his evidence as to what he is expected to say in the witness-box, then I think, that would be most reprehensible and calls for condemnation in the strongest terms. Here, a specific allegation has been made that there was coaching by counsel for the plaintiff of PW1 in the discussion between them during an adjournment while PW1 was still under cross-examination. In response, counsel for the plaintiff maintains that she did not (to use her own words) 'have any dealings with PW1 behind anybody's back'. What that means is not entirely clear. She does not specifically refute the allegation raised by counsel for the defendant which naturally opens the door to an inference that there may be some truth in the allegation. In the circumstances, I think it fair and proper to allow the application.

*Application allowed.*

Reported by Ezatul Zuria Azhari